



Civil Resolution Tribunal

Date Issued: July 5, 2022

File: SC-2021-007961

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marks v. Feng*, 2022 BCCRT 769

BETWEEN:

ANITA MARKS, DAVID JAMES MARKS, and PAZDER LAW
CORPORATION

APPLICANTS

AND:

SAMANTHA FENG and JAMES L. DAVIDSON & COMPANY LAW
CORPORATION

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a strata lot purchase holdback. The applicants Anita Marks and David James Marks sold their strata lot to the respondent Samantha Feng. The applicant Pazder Law Corporation (PLC) represented the Marks in the purchase,

and the respondent James L. Davidson & Company Law Corporation (JLD) represented Ms. Feng. Under the contract of purchase and sale (CPS), JLD was to hold \$5,000 from the sale in trust. This “holdback” was to be paid to Ms. Feng if a certain event occurred within 6 months of the purchase’s completion, and otherwise paid to the Marks. The Marks say the event did not occur, but JLD has not released the holdback. They request an order releasing the \$5,000 holdback to them.

2. Ms. Feng says the holdback was to cover expenses resulting from strata insurance premium increases. She says that her monthly strata fees increased because of such premium increases, so the Marks are not entitled to the holdback. Ms. Feng says the holdback should be released to her instead. However, Ms. Feng does not counterclaim for the holdback, so I am unable to order its release to her in any event.
3. Ms. Marks represents the applicants in this dispute. Ms. Feng is self-represented. JLD is represented by an owner, Ross Davidson.

JURISDICTION AND PROCEDURE

4. These are the formal reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. In a December 2, 2021 decision, a CRT tribunal member found on a preliminary basis that the CRT has jurisdiction to hear this dispute. Although that decision is not binding on me, I find the tribunal member's reasons persuasive and I agree with them. CRTA section 118(1)(c) says the CRT has jurisdiction to resolve a claim for specific performance of an agreement relating to personal property or services. I find the CPS addendum between the Markses and Ms. Feng, discussed below, related to personal property, specifically the \$5,000 holdback. I find that this CRT claim is a request for specific performance of the CPS addendum's terms relating to payment of the holdback. Given that JLD is a party to this dispute, I find that the CRT has jurisdiction under section 118(1)(c) to order JLD to pay out the holdback funds, if warranted.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to the \$5,000 holdback under the terms of the CPS, and if so, should I order JLD to release it to them?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.

11. At the outset, I note that it is unclear why PLC is named as an applicant in this CRT dispute. The evidence does not show that PLC is a party to any holdback agreement or is in possession of any holdback funds. The applicants do not say that PLC is entitled to any portion of the \$5,000 claimed, and their submissions do not indicate that any funds should be transferred to or through PLC. So, I dismiss PLC's claim.
12. I turn now to the Marks'es' strata lot sale and their holdback claim. April 27, 2020 strata meeting minutes showed that the strata corporation (strata) had recently borrowed money from its contingency reserve fund (CRF) to pay for increased strata insurance premiums. Correspondence in evidence shows that around the time Ms. Feng agreed to purchase the Marks'es' strata lot in August 2020, she expressed concerns about whether the lot's strata fees would increase to pay back the CRF loan. I find nothing in evidence says how the strata planned to pay back the loan or when. The parties agree that Ms. Feng's realtor then drafted an addendum to the parties' CPS that addressed CRF repayments.
13. The Marks'es and Ms. Feng undisputedly signed the August 11, 2020 addendum, which was "further to" and formed part of the August 5, 2020 CPS agreement. None of the parties submitted a copy of the other portions of the CPS, so it is unclear what the CPS's other terms were. I infer that the sale completion date was November 5, 2020, which is the date the parties say the sale occurred.
14. Despite some imperfect word choices, I find the addendum unambiguously said that if a "special levy... for the purpose of replenishing the strata's contingency reserve fund" was passed within 6 months after the sale completion date, the Marks'es would pay the levy up to a maximum of \$5,000. This potential \$5,000 payment was to be held in trust by Ms. Feng's lawyer or notary from the sales proceeds. Once it was confirmed that such a levy was payable, the lawyer or notary was to remit the entire levy amount, up to \$5,000, to the strata management company, and return any remaining funds to the Marks'es. However, if such a levy was not passed within the 6-month timeframe, the holdback amount was to be returned to the Marks'es or their lawyer or notary and Ms. Feng would have no claim to it.

15. As noted, the Marksés and Ms. Feng disagree about who should receive the \$5,000 holdback. Ms. Feng argues that the “purpose” of the holdback should govern, which she says was to compensate her for strata fee increases that occurred within 6 months after the completion date. The Marksés dispute this. They say that Ms. Feng is trying to rewrite the addendum, which refers specifically to a special levy that admittedly was not proposed or voted on as required under section 108 of the *Strata Property Act*.
16. In *Tai An Holding Company Ltd. v. Boyal*, 2022 BCSC 821 at paragraphs 53 and 54, the court found that a party’s subjective beliefs about the intent and meaning of written contractual obligations had virtually no value in interpreting the contract. The court said that this was because contract interpretation does not involve a party’s subjective beliefs about the intent of the contract’s terms. Rather, contract interpretation involves a determination of the objective meaning of the written text of the contract, as informed by the surrounding circumstances.
17. Given *Tai An* and this dispute’s surrounding circumstances, I do not accept Ms. Feng’s arguments that the alleged purpose of the addendum was different than its plain language, and that the alleged purpose should be preferred to the addendum’s words. Further, even if the written addendum was ambiguous about what would trigger a holdback payout to Ms. Feng, I find the legal doctrine of “contra proferentem” (“against the offeror”) would apply. That doctrine says that contract ambiguities are resolved against the party who drafted the contract, and here Ms. Feng’s real estate agent undisputedly drafted the addendum. Further, Ms. Feng does not say that she mistakenly agreed to the written addendum or did not have an opportunity to seek legal advice about it, but she argues for a different interpretation of the parties’ agreement.
18. For the above reasons, I find the addendum, as written, governs the holdback and how it is paid out. Although the CPS’s other terms are not before me, I find that the addendum, interpreted in context and in light of the surrounding circumstances, was not ambiguous. I find that for Ms. Feng to be paid any part of the holdback under the

addendum, the strata ownership must have passed a resolution approving a special levy in the specified timeframe, and that levy's purpose must have been to replenish the strata's CRF, which admittedly has not occurred here.

19. A January 18, 2021 memo to owners from the property management company, Gateway Property Management (Gateway), said that the owners had approved a new budget effective December 1, 2020 at the January 11, 2021 annual general meeting (AGM). Although there are no meeting minutes of that AGM before me, I accept that a new budget was approved because the parties do not dispute that. Gateway attached to the memo a spreadsheet that showed a 45% increase to the strata lot's monthly fees. This monthly fee amount included a "CRF Contribution" amount.
20. However, I find there is no evidence before me showing that the "CRF Contribution" amounts shown in the spreadsheet include CRF replenishment amounts under a special levy passed between the CPS date and May 5, 2021. An October 12, 2021 Gateway email (under its new corporate name) confirmed that there was no such special levy, and that the strata budgeted for a further insurance increase in its operating fund, which resulted in the 45% strata fee increase. I accept this email as true because there is no contrary evidence.
21. Overall, I find the evidence before me fails to show that any special levy was passed by the required strata ownership vote within 6 months after the November 5, 2020 strata lot sale completion date. Given that the addendum required the ownership to pass such a special levy in order for Ms. Feng to receive any holdback funds, I find she is not entitled to any portion of the holdback. Under the addendum, I find the Marksés are entitled to the \$5,000 holdback held in trust by JLD.
22. JLD confirms that it continues to hold the \$5,000 in trust, and will pay it to the Marksés in accordance with a CRT order. I allow the Marksés' claim, and I order JLD to release the \$5,000 holdback to the Marksés, as specific performance of the CPS addendum.

CRT Fees, Expenses, and Interest

23. I find that in this dispute, JLD was merely a trustee of the holdback funds, and only refused to transfer them to the Marks because of Ms. Feng's disagreement about the addendum's interpretation. So, I find JLD is not liable for any CRT dispute-related interest, expenses, or fees.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, the Marks are entitled to pre-judgment interest on the \$5,000 owing, reasonably calculated from 6 months after the sale completion date, which is May 5, 2021, until the date of this decision. This equals \$27.18, which I find Ms. Feng alone must pay.
25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. The Marks were successful in their claim, so I find Ms. Feng must reimburse them the \$175 Ms. Marks paid in CRT fees. No party claimed CRT dispute-related expenses.

ORDERS

26. I order that, within 30 days of the date of this decision, JLD transfer to the Marks the \$5,000 held in trust pursuant to the CPS addendum dated August 11, 2020.
27. I order that, within 30 days of the date of this decision, Ms. Feng pay the Marks a total of \$202.18, broken down as follows:
 - a. \$27.18 in pre-judgment interest under the *Court Order Interest Act*, and
 - b. \$175 in CRT fees.
28. The Marks are also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
29. I dismiss the applicants' remaining claims.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member